

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Proposing rule making related to procurements from targeted small businesses and providing an opportunity for public comment

The Administrative Services Department hereby proposes to amend Chapter 117, "Procurement of Goods and Services of General Use," and Chapter 118, "Purchasing Standards for Service Contracts," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 8A.104 and 8A.311.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 485.

Purpose and Summary

The Department of Administrative Services proposes these rule amendments as a result of 2019 Iowa Acts, House File 485, which addresses state purchasing requirements relating to Targeted Small Business procurement goals. 2019 Iowa Acts, House File 485, gives the Department authority to set a Targeted Small Business spending threshold, by rule, not to exceed \$25,000. The amendments, in part, propose setting the spending threshold at \$25,000. The amendments also detail reporting requirements for state agencies to the Department regarding Targeted Small Business procurement.

Fiscal Impact

The Iowa Economic Development Authority reports that the fiscal impact of these amendments is indeterminable.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 26, 2019. Comments should be directed to:

Tami Wiencek
Department of Administrative Services
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Phone: 515.725.2017
Fax: 515.281.6140
Email: tami.wiencek@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 26, 2019
10 to 11 a.m.

Procurement Conference Room, A Level
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 117.5(2) as follows:

117.5(2) Targeted small business (TSB) procurement.

a. Justification for TSB procurement. Agencies may purchase from a TSB without competition for a purchase up to ~~\$10,000~~ \$25,000 if the purchase would contribute to the agency complying with the targeted small business procurement goals under Iowa Code sections 73.15 through 73.21.

b. Special procedures for TSB procurements. Agencies must confirm that the vendor is certified as a TSB by the economic development authority. An agency may contact the TSB directly.

c. Reporting requirements for TSB procurement. By December 1 of each year, each agency shall provide the department with an annual report of procurements made in the previous fiscal year pursuant to paragraph 117.5(2) "a." The annual report will be in a format prescribed by the department.

ITEM 2. Amend subrule 117.15(3) as follows:

117.15(3) Preference to targeted small businesses. Agencies shall search the TSB directory on the Iowa economic development authority's website and may purchase a good or service directly from the TSB source if the cost is equal to or less than the spending limit set forth in ~~Iowa Code section 8A.311(10)~~. paragraph 117.5(2) "a." Agencies shall comply with the TSB notification requirements in subrule 117.8(2).

ITEM 3. Amend subrule 117.15(4) as follows:

117.15(4) Misuse of agency authority.

a. Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in ~~subrules~~ subrule 117.5(2), 117.15(1) and or 117.15(2).

b. As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement.

c. This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule 117.4(1).

d. The department may rescind delegated authority of an agency that misuses its authority or uses the authority to procure goods or services already available on a master agreement.

e. This rule does not prohibit agencies from dividing procurements into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses consistent with subrule 117.5(2) and Iowa Code section 73.17(1).

ITEM 4. Amend rule 11—118.5(8A), introductory paragraph, as follows:

11—118.5(8A) Use of competitive selection. State agencies may procure non-master agreement services from private entities without competition when the estimated value does not exceed \$5,000. Agencies shall use competitive selection to acquire services from private entities when the estimated annual value of the service contract is greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is greater than \$15,000 unless there is adequate justification for a sole source or emergency procurement pursuant to rule 11—118.7(8A) or emergency procurement pursuant to rule 11—118.8(8A) or unless awarded to a targeted small business pursuant to 11—paragraph 117.5(2)“a” or procured pursuant to another exception to competitive selection under another provision of law.